



**Republic v Attorney General & another; Nkirote (Exparte Applicant) (Environment and Land Judicial Review Case 8 of 2018) [2024] KEELC 6353 (KLR) (25 September 2024) (Judgment)**

Neutral citation: [2024] KEELC 6353 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE 8 OF 2018**

**CK NZILI, J**

**SEPTEMBER 25, 2024**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**ATTORNEY GENERAL ..... 1<sup>ST</sup> RESPONDENT**

**THE ADJUDICATION & SETTLEMENT OFFICER IMENTI**

**NORTH ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**CELINA NKIROTE ..... EXPARTE APPLICANT**

**JUDGMENT**

1. On 2.10.2018, the applicant filed a notice of motion dated 2.10.2018 pursuant to leave granted on 30.7.2018. In the said motion, the court is asked to issue an order of mandamus to remove into this court and to compel the 2<sup>nd</sup> respondent to issue a statutory consent to sue map and letter of confirmation of land parcel No. Ruiriri Rwarera/4401 owned by the exparte applicant.
2. The notice of motion is supported by a verifying affidavit of Celina Nkirote sworn on 2.10.2018. It is averred that the applicant was the first allottee of the suit land in 1970, measuring approximately 35 acres, and has lived therein for over 40 years without any form of interference. The applicant states that she lost her original allotment/gathering book in a house fire and that sometime in January 2017, she noticed two people on her land who constructed semi-permanent houses on the front side of her land.
3. The applicant avers that she reported the matter to the area chief, who referred her to the Land Adjudication Officer Meru Town, where she complained of encroachment of her land against four people, saying that their parcels of land were on her land.



4. Again, the applicant avers that the land adjudication officers checked their book and told her that her land parcel was intact, for no objection case had been filed against her.
5. The applicant avers that the land adjudication officer promised to send some land surveyor to help solve the problem. However, they never showed up.
6. Further, the applicant avers that she tried to file an objection against Stanley Ndumba, Edward Mwiti, Rosalia Mukiri, Geoffrey Gitonga, and Francis Mwirigi M’Imanthi, who were physically on her land, only to be told that the objection stage was over and the only recourse was the court.
7. The applicant avers that she has tried to apply for a letter of confirmation, statutory consent to sue, and a map of the land so as to sue the trespassers, but the 2<sup>nd</sup> respondent has failed or neglected to issue her with the said documents.
8. Further, she avers that she has knocked on various government offices to demand the documents without much success. Annexed to the application is a letter marked in “CN I” and a demand letter marked “CN 2”, which elicited no replies. The applicant avers that there is no tangible reason why the 2<sup>nd</sup> respondent cannot supply her with the documents that it holds in trust for her and the public in general.
9. Similarly, the applicant avers that she has brought the application out of time for the 2<sup>nd</sup> respondent came to the land on 3.8.2018, with people who took measurements on the land and promised to issue to her the documents in vain.
10. The applicant avers that unless the orders sought are granted, she stands to suffer irreparable damage since those who have trespassed on her land were blocking her access and easement to the land.
11. In the statutory statement of facts dated 20.6.2018, the applicant repeats the contents of her verifying affidavit. She avers that the 2<sup>nd</sup> respondent is the custodian of the records/registers and maps for Ruiru Rwarera/Adjudication Section and, in particular, the record for P. No. 4401 Ruiru Rwarera Adjudication Section and that unless the same are supplied to her, the right to property shall stand violated by third parties who have encroached her land.
12. From the court record, it appears that when the notice of motion was served and came up for hearing on 30.7.2018, Mr. Kiongo learned litigation counsel appearing for the respondents stated from the bar that he was not opposed to the application. The notice of motion was, therefore, allowed, and the District Land Adjudication and Settlement Officer (DLASO) was directed to issue the documents.
13. The matter was, therefore, fixed for mention before the Deputy Registrar on 3.10.2018 and 23.10.2018. During further mentions, the respondents indicated to the court that title deeds were out and, therefore, the issuance of the documents sought was problematic.
14. Summons were therefore issued to the 2<sup>nd</sup> respondent, Mr. Justus Levu, to produce the land adjudication report on land registration for P. No. 4401 Ruiru/Rwarera adjudication Section. Another order was made dated 3.6.2021 for the Deputy Registrar to avail the documents, attend a scene visit, and the Officer Commanding Station Kiirua Police Station to provide security during the visit. It appears that even before the notice of motion was filed, the respondents had conceded to the chamber summons dated 20.6.2018 to the extent that the documents sought be supplied.
15. Be that as it may, the notice of motion has not been opposed by the respondents despite service upon them. An order of mandamus is a form of a command issued by a court directed to any person or inferior tribunal, requiring it or him to do some particular thing therein specified, which appertains to his or their office and is in the nature of a public duty. Its purpose is to remedy the defects of justice



and accordingly, issues in the interest of justice where there is a specific legal right and no specific legal remedy for enforcing that right.

16. In *Republic vs KNEC exparte Githinji & others* (1997) eKLR, the court cited with approval Halsburys Laws of England 4<sup>th</sup> Ed Vol. 7 P 111, that an order of mandamus compels the performance of a public duty which is imposed on a person by a statute and where that person or body fails to perform the duty to the detriment of a party who has a legal right to expect the duty to be performed.
17. In *Sinopec International Petroleum Service Corp vs Public Procurement Administrative Review Board & others* (Civil Appeal) No. E012 of 2024 (2024) KECA 184 (KLR) 23<sup>rd</sup> February 2024 (Judgment), the court observed that it had no duty to either enlarge the scope of the legislation or the intention of the legislature when the language of the provisions was plain and unambiguous and that courts decide what the law is and not what it should be, by adopting a construction which will carry out the apparent intention of the legislature and not to legislate.
18. As to whether a court can suo moto raise and address a point of law that was not addressed at the lower court, the court cited *Harun Meitamei Lempaka vs Lemaken Aramat & others* (2014) eKLR, that issues of jurisdiction or competence of a court to entertain or deal with a matter were fundamental in which a court of law cannot dictate when and how such a point of law can be raised. Therefore, the court said that where a jurisdictional issue is raised, a challenge of parties being bound by their pleadings cannot rightly lie for the law is the preserve of the courts which take judicial notice.
19. Further, the court held that courts do have the monopoly of law as it applies the law to a set of facts in reaching its decision. The court said that it would be unconscionable and a dereliction of duty for the court to endorse the award of the tender on the face of manifest violation of the law.
20. Applying the preceding case law to the instant notice of motion, access to information held by the state and required for the exercise or protection of any right or fundamental freedom is a constitutional right provided under Article 35 of *the Constitution*. The *Access to Information Act* provides the manner in which a party can seek such information.
21. The exparte applicant has pleaded that she made efforts to reach out to the respondents for consent to sue under Section 30 of the *Land Adjudication Act* to file an objection and to be supplied with a confirmation letter on ownership of parcel No. 4401 and for the area map. The respondents have not denied the letters written to them requesting for the documents. Similarly, factual issues raised in the verifying affidavit, the statutory statement of facts, and the notice of motion have not been controverted by the respondents.
22. The tests to apply in granting mandamus were set out in *Apotex Inc. vs Canada (AG)* (1993) CAN L11 3004 and *Dragon vs Canada Minister of Citizenship & Immigration* (2003) FCA 139 as cited in *Republic vs AG & another Mwololo & another (IP) Kamula & others (Exparte Applicants E & L JR Case E005 of 2023 (2024) KEELC 4317 (KLR) (22<sup>nd</sup> May 2024 (Judgment)*. They include the existence of a public legal duty to act; the duty as owed to the applicant, there must be a clear right to the performance of that duty, no other adequate remedy is available, the order sought must be of some practical value or effect, there is no equitable bar to the relief sought and on a balance of convenience, mandamus should lie.
23. There is no doubt that when a land is under adjudication, a suit cannot be lodged without the mandatory consent to sue. A consent to sue is, therefore, a condition precedent without which such a suit would be dead on arrival. Similarly, a party seeking enforcement of encroachment orders such as the ones that the exparte applicant was seeking has to prove proprietary interest in the land allegedly trespassed into. So, the documents sought by the exparte applicant were of practical value to her. The



documents, in no doubt, are held by the respondents, who have a public duty to supply them to the applicant for furtherance of her constitutional right to property, access to justice and fair hearing. The respondents have given no compelling reasons why the documents could not be supplied to the exparte applicant.

24. In *Dande & others vs Inspector General National Police Service & others* Petition (6) E007 4 (E005) & (8) E010 of 2022 consolidated (2023) KESC 40 (KLR) (16<sup>th</sup> June 2023) (Judgment), the court observed that the right to access information was a fundamental right upon which other rights guaranteed in the Bill of Rights could be realized. Further, the court said that the right encompassed the right to seek and receive information and was guaranteed to every citizen. Again the court held that Section 4 of the *Access to Information Act* No. 31 of 2016 gives effect to Article 35 of *the constitution* and is unlimited. Further, a requester seeking to enforce his right under Article 35 (1) (b) of *the Constitution* needed to demonstrate the right to be protected and that access to the information was required to exercise or protect that right.
25. In this notice of motion, I find that the exparte applicant has identified the right and established a demonstratable link between the right she intends to exercise or protect and the information requested. The upshot is that I grant the reliefs sought. The documents shall be supplied within 14 days from the date hereof.
26. Costs to the exparte applicant.

**DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON THIS 25<sup>th</sup> DAY OF SEPTEMBER, 2024**

In presence of

C.A Kananu

Applicant present

Otieno C. for the applicant

**HON. C K NZILI**

**JUDGE**

